

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 817 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

MOHANBHAI K JESWAL

Appearance:

MR RC KODEKAR, APP for Appellant

MR BM GUPTA for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 18/10/1999

ORAL JUDGEMENT

1. The Appellant - State of Gujarat has filed this Appeal under Section 378 of the Code of Criminal Procedure, 1973, challenging the judgment and order of the learned Metropolitan Magistrate, Court No.10, Ahmedabad, in Criminal Case No. 896 of 1985 whereby the learned Metropolitan Magistrate has acquitted the respondents of the offences punishable under Sections 324, 504, 506(2) and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. The prosecution case in brief is summarised as under :

Complainant - Ambalal Shankarlal Prajapati - PW1 was residing at 107 Anand Flat, Bapunagar, Ahmedabad City along with his family members. On July 15, 1985, he had gone to his brother's place and returned to his house in the evening at about 8.00 p.m. He was in preparation for taking his dinner. Meantime, somebody pressed the bell of his house and when he opened the door, he saw respondent No.1 standing near his house and he called him to come outside. The complainant went with the respondent No.1. Meantime, the respondent No.1 took out a Rampuri knife and gave him abuses. The complainant got frightened and raised shouts. On hearing the shouts, one Kantibhai Dungardas - PW3 who was residing opposite to the complainant's house in Block No.25/1, came running towards the complainant. The respondent No.1 was carrying an iron pipe and gave a blow on the head of Kantibhai as he tried to rescue the complainant. The respondent No.1 was accompanied by one unknown person and at the time of leaving the place of incident, they threatened the complainant and Kantibhai with dire consequences. The complainant after the incident came to know that the other man who was accompanied with the respondent No.1 was respondent No.2, was residing in Block No. 45/2. PW-3 Kantibhai was seriously injured and there was bleeding from his head and, therefore, he was taken to Sardaben Hospital, where he was admitted as an indoor patient. The complainant, thereafter lodged a complaint against both the respondents at Odhav Police Station which was registered as CR-I 149/85 for the offences punishable under Section 324, 504, 502(2), 114 of the IPC and also under Section 135(1) of the Bombay Police Act. The Investigating Officer, who was in charge of the above registered crime, carried out the investigation and prepared the panchnama of the scene of office and collected the certificate from the Sardaben Hospital and arrested the respondents. The respondents while in police custody showed their willingness to produce the muddamal pipe which was seized under panchnama. After completing the investigation, charge sheet came to be filed by Odhav Police Station in the Court of Metropolitan Magistrate, Court No.10, which was numbered as Criminal Case No. 896 of 1985.

3. Charge - exhibit 3 was framed against the respondents which was read over and explained to them. They pleaded not guilty and claimed to be tried. To

prove the case against the respondents, the prosecution examined the following witnesses :

- (i) PW1 - Complainant - Ambalal Shankarlal - Exh.5
- (ii) PW2 - Lilaben Shantilal - Exh.7
- (iii) PW3 - Kantibhai Dungardas - Exh.8
- (iv) PW4 - Bhupatsing Kantilal - Exh.9
- (v) PW5 - Vinodhbhai Ranchhodlal - Exh.10
- (vi) PW6 - Vashrambhai Jumabhai - Exh.12
- (vii) PW7 - Dr. Virendrabhai K. Shah - Exh.13

4. The prosecution has produced documentary evidence, such as, complaint, panchnama of the place of incident, panchnama of the seizure of muddamal - iron pipe, injury certificate of PW3 Kantibhai, etc to prove the charges framed against the respondents.

5. After the prosecution evidence was over, the respondents came to be questioned generally and their statements came to be recorded under Section 313 of the Code of Criminal Procedure, 1973, wherein the respondents denied the prosecution case and stated that they were falsely involved in this case.

6. On overall appreciation of oral as well as documentary evidence, the learned Metropolitan Magistrate, Court No.10, came to the conclusion that no independent witness was examined by the prosecution and all the interested witnesses were examined and there were many contradictions in the evidence of the witnesses examined by the prosecution. It was further concluded that the evidence of prosecution witnesses did not inspire confidence. The learned Metropolitan Magistrate further concluded that the injury certificate was not proved by the prosecution inasmuch as the Doctor who examined Kantibai Dungardas in Sardaben Hospital, was not examined and further that the Investigating Officer was also not examined before the Court to prove the contradictions as found in the evidence of the prosecution witnesses, which caused serious prejudice to the defence. On the basis of the above referred to conclusion, the learned Metropolitan Magistrate, Court No.10, acquitted the respondents of the charges under Sections 324, 504, 506(2), 114 of the IPC and also under Section 135(1) of the Bombay Police Act by judgment and order dated 17th August, 1991, which has given rise to the filing of the present Appeal by the Appellant - State of Gujarat.

7. Learned Additional Public Prosecutor Mr. R.C. Kodekar, has taken me through the entire evidence

produced on the record of this case and has contended that the trial court has erred in not relying on the evidence of the prosecution witnesses, who had seen the actual occurrence and the respondent No.1 inflicting iron pipe blow on the head of Kantibhai. He further contended that the prosecution by examining the complainant and injured witness Kantibhai, had proved the case beyond reasonable doubt that the respondents were guilty of the offences for which they were charged. It is submitted that the learned Metropolitan Magistrate erred in giving more importance to the minor contradictions found in the evidence of the prosecution witnesses. Learned APP further contended that the prosecution had led sufficient evidence to prove the charges against the respondents, and therefore, the Appeal be allowed and the order of acquittal be set aside.

8. On the other hand, learned counsel for the respondents Mr. B.M. Gupta pleaded that the evidence of the prosecution witnesses was full of contradictions and only interested witnesses were examined and, therefore, their evidence requires to be minutely scrutinised. It is further contended by the learned counsel for the respondents that the prosecution did not examine the Investigating Officer, which has caused serious prejudice to the defence as contradictions and omissions as found, in the evidence of prosecution witnesses could not be brought on record. It is submitted by the learned counsel for the respondents that the prosecution also did not examine the Medical Officer, who had examined Kantibai in the Sardaben Hospital, with the result that, the respondents could not cross-examine the doctor with regard to the injuries found on the head of injured Kantibhai and could not be brought to the light the fact whether the injury which was found on the head of Kantibhai was possible by the muddamal article - iron pipe. It is further submitted by the learned counsel for the respondent that it is being an appeal against the acquittal, the appellate court can only interfere with the finding of the trial court if the findings are found to be palpably wrong, manifestly erroneous and demonstrably unsustainable. He further submitted that even there are two views are possible, then, the view which is taken by the trial court should be given due weightage. Learned counsel for the respondents, therefore, submitted that the appreciation of evidence by the trial court was correct and, therefore, the appeal be dismissed.

9. The submission of the learned counsel for the appellant that the trial court erred in not relying on

the evidence of the prosecution witnesses, which has no merits and deserves to be rejected. Learned Metropolitan Magistrate in his order has rightly appreciated the evidence of the prosecution witnesses and has given just and proper finding that the evidence of the prosecution witnesses did not inspire confidence and they did not give correct version of the occurrence. Further more, the prosecution did not examine the Investigating Officer, which has caused serious prejudice to the defence as there was no opportunity for the defence to prove the contradictions and omissions as found in the evidence of the prosecution witnesses.

10. The prosecution also did not examine the Medical Officer who had examined injured Kantibhai in the Sardaben Hospital, with the result that, no opportunity was offered to the defence to explain whether the injury as found on the head of injured - Kantibhai was possible by the blow given with the help of muddamal article iron pipe. The reasons for acquittal recorded by the learned Metropolitan Magistrate cannot be called perverse or palpably wrong. In 1996 (2) GLH 206, the Apex Court has laid down the principle as to whether under what circumstances the appellate court should interfere with the order of acquittal recorded by the Trial Court. The Apex Court in the above referred to decision has ruled that unless the finding of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable, the appellate court should not interfere with the findings of facts recorded by the trial court. It is also ruled by the Apex Court in the above referred to decision that if on the re-appreciation of evidence, another view than one taken by the trial court is possible, cannot constitute a valid and sufficient ground to interfere with the acquittal order.

11. I have carefully gone through the oral evidence of the prosecution witnesses and the appreciation of it by the trial court. In my opinion, under no circumstances, it can be said that the appreciation of evidence by the learned Metropolitan Magistrate is palpably wrong or perverse. Therefore, I am of the opinion that the order of the acquittal cannot call for any interference in this Appeal filed by the Appellant State of Gujarat.

12. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the

matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent and the learned Additional Public Prosecutor had failed to dislodge the reasons given by the learned Magistrate in order to convince this court to take a view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

13. For the foregoing reasons, I do not find any substance in the Appeal. The Appeal, therefore, fails and is dismissed. Mudammal be destroyed as per the directions given in the impugned judgment.

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